C.A.No.750/2004

The Appellant/Accused namely Arumugham was directed to be released on bail in and by the order of this Court dated 7.3.2006 in Crl.M.P.1100/2006.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2006

CORAM

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO.750 OF 2004

Arumugham .. Appellant/Accused

Vs.

State rep. by
the Inspector of Police,
Indur Police Station,
Dharmapuri District
Crime No.363 of 2000 .. Respondent/Complainant

This criminal appeal is preferred under Section 374(2) Cr.P.C against the judgment of the learned Additional Sessions Judge, Dharmapuri, Dharmapuri District made in S.C.No.34 of 2003, dated 13.05.2004.

For Appellant : Mr.S.Ganesh Rajan

For Respondent : Mr.P.Kumaresan, APP

- - - -

JUDGMENT

(The judgment of the Court was made by M.CHOCKALINGAM, J.)

The sole accused in a case of murder, on being found guilty as per the charge and awarded with life imprisonment and a fine of Rs.5000/-, in default to undergo one year imprisonment by the learned Additional Sessions Judge, Dharmapuri, Dharmapuri District in S.C.No.34 of 2003, has brought forth this criminal appeal.

2.The short facts necessary for the disposal of this appeal can

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be stated thus:

a)P.W.1 is the father of the deceased Thangammal. P.W.1 was living with his family at Thalavaialli Village. His daughter Thangammal was given in marriage to the accused, who was a driver by profession. He used to come home once in 15 days. He entertained suspicion over the fidelity of his wife and it was reported. Then and there, quarrel arose between the spouses and she went to P.W.1's house and she was advised to go to the house of the accused. One and half years prior to the occurrence, the accused drove her out. A panchayat was convened and the accused asked for divorce. The village panchayatdars were not amenable for the same. They advised him to take her back, but he did not take her back. It was again reported by P.W.1 to the panchayat. Following the same, the deceased Thangammal was sent to the house of the accused. She came to know that the accused consumed poison. Thereafter, she went to one of her relative's house.

b)On 29.9.2000, P.W.1's another daughter and the deceased Thangammal went to the temple in a bus. In the same bus, the accused also traveled. After worship was over, the accused took Thangammal aside and talked with her for about half an hour. Thereafter, all of them returned. On the said day at about 7.00 p.m., the accused came and took his wife to the place of occurrence and they were proceeding, which was witnessed by P.W.8. P.W.1 came to the house after 8.00 p.m. and questioned his wife as to the whereabouts of Thangammal. She informed him that she would have gone to the other daughter's house. On 30.09.2000, the dead body of the deceased was found in the place of occurrence.

c)Immediately, P.W.1, to whom it was brought to the notice, proceeded to the respondent police station and gave Ex.P.1, the complaint to P.W.11, the Sub Inspector of Police. On the strength of the same, he registered a case in Crime No.363 of 2000 under Section 302 IPC. Ex.P.8, the express FIR, was sent to the Court.

d)P.W.13, the Inspector of Police, on receipt of the copy of the FIR, took up the investigation, proceeded to the spot and made an inspection in the presence of the witnesses. He prepared Ex.P.4, the observation mahazar and Ex.P.11, the rough sketch. The dead body and the place of occurrence were photographed. Ex.P.6 (series) photos and Ex.P.7 (series) negatives were marked. The material objects including sample earth and bloodstained earth were also recovered. At about 11.30 a.m., the Investigating Officer has conducted inquest on the dead body of the deceased in the presence of the witnesses and panchayatdars and prepared Ex.P.12, the inquest report. Following the same, the dead body of the deceased was sent for the purpose of autopsy to the Government Hospital along with a requisition.

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e)P.W.12, the Doctor attached to the Government Hospital, Dharmapuri, on receipt of the requisition, has conducted autopsy on the dead body of the deceased and has found the following injuries:

> "1.A semi circular incised wound of 12 x 2 x 5 cm extending from right mandible m/3 to left mandible M/3 exposing fracturing mandible in pieces with a flap with part of mandible, muscles hanging below the chin.
>
> 2.An abrasion of 10 cm x ½ cm extending from left side of above wound.
>
> 3.Haemotoma & (subcuticular) all around neck.
>
> 4.An oval shaped incised wound of 3 x 2 x 3 cm just below the sternum end of right clavicle exposing underneath ribs.
>
> 5.Oval shaped laceration of 2 x 1 ½ x 1 cm over left shoulder.
>
> 6.Incised wound of about 15 x 7 x 8 cm extending from M/3 of right clavicle to anterior medical aspect of right arm exposing muscles (cutting) bone humerous fracture cutting nerves vessels, right shoulder right humerous U/3."

He has issued EX.P.10, the post-mortem certificate, wherein he has opined that the deceased would appear to have died due to shock and haemorrhage, vital sternum cut, 20 to 30 hours prior to autopsy.

f)Following the same, the investigation was on. Pending investigation, the accused was arrested. He volunteered to give a confessional statement, which was recorded in the presence of the witnesses, the admissible part of which was marked as Ex.P.13. Pursuant to the confessional statement, he produced M.O.7, aruval, which was recovered in the presence of the witnesses under a cover of Ex.P.14, mahazar. The accused was sent for judicial remand. Following the same, a requisition was forwarded to the concerned committal court for subjecting all the material objects for chemical analysis. Accordingly, all the material objects were sent for chemical analysis by the Forensic Science Department along with a requisition. Ex.P.17, the Chemical Analyst's report and Ex.P.18, the Serologist's report were received. On completion of the investigation, the Investigating Officer has filed the final report.

3.The case was committed to the Court of Sessions and necessary charges were framed. In order to substantiate the charges, the prosecution examined 13 witnesses and relied on 19 exhibits and 7 M.Os. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C procedurally as to the incriminating circumstances found in the evidence of prosecution witnesses, which he flatly denied as false. No defence witness was examined. After the evidence was over, the trial judge heard arguments on both sides, scrutinized the materials available

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and took a view that the prosecution has proved the case beyond reasonable doubt and recorded conviction and sentence of imprisonment for life, which is the subject matter of challenge before this Court.

4.Advancing his arguments on behalf of the appellant, the learned counsel would submit that in the instant case, the prosecution had no direct evidence to offer; that it relied on circumstantial evidence, but the prosecution miserably failed to place and prove necessary circumstances; that in the instant case, according to the prosecution, the only strong circumstance was that of P.W.8, who had last seen them at 8.30 p.m.; that when he was near the school, he found the accused and the deceased going through the place and in the next morning, the dead body of the deceased was found. The learned counsel criticized the evidence of P.W.8 on the ground that he was a close relative of the deceased; that he was an uncle; that he has not informed to anybody that he saw the deceased in the company of the accused; that he was not even a witness during the inquest; that though his statement was recorded on the very day, it reached the Court only after a month and thus, he was a witness introduced for the purpose of prosecution case and that the evidence of P.W.8 was thoroughly unbelievable.

5.Added further the learned counsel that it is true, the prosecution came forward with some motive by stating that the accused entertained suspicion over the fidelity of his wife and therefore, he wanted divorce from her; that at the time of occurrence, no one witnessed the occurrence; that no circumstance worth mentioning was available for the prosecution; that both the witnesses, namely P.Ws.5 and 6, as to the alleged confessional statement and recovery, have turned hostile; that the alleged confessional statement and the recovery were not proved; that M.O.7, aruval was subjected to chemical analysis, but it did not contain any human blood and under these circumstances, the arrest, recovery pursuant to the confessional statement and also the scientific evidence were not in support of the prosecution and thus, the prosecution had no evidence to offer; that when the case was bereft of evidence, the lower court has erroneously found him guilty merely on the motive aspect as put forth by the prosecution and hence, the appellant is entitled for acquittal in the hands of this Court.

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6.Heard the learned Additional Public Prosecutor on the above contentions.

7.The Court has paid its anxious consideration on the submissions made.

8.It is not the fact in controversy that one Thangammal, the daughter of P.W.1, was done to death in an incident that took place on 29.9.2000 during night hours. The dead body of the deceased was

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found at about 7.00 a.m. on 30.09.2000. A report was given by P.W.1 to the respondent police at about 9.30 a.m. and a case came to be registered. Following the inquest made by the Investigating Officer, the dead body of the deceased was subjected to post-mortem by P.W.12, the Doctor. He has issued Ex.P.10, the post-mortem certificate, wherein he has opined that the deceased would appear to have died due to shock and haemorrhage, vital sternum cut. Thus, the prosecution was able to prove that the deceased died out of homicidal violence. Apart from that, this fact was never questioned by the appellant/accused at any stage. Hence, it has got to be recorded so.

9.In the instant case, before the trial court, the prosecution had no direct evidence to offer, but it rested the case exclusively on circumstantial evidence. It is needless to say, in a case where the prosecution rested the case on circumstantial evidence, a duty is cast upon the prosecution to place and prove necessary circumstances, which should form a complete chain without snap, pointing to the hypothesis that except the accused none else could have committed the offence. After applying this test, the Court is afraid whether the Court can sustain conviction in the instant case.

10.It is true, the daughter of P.W.1, namely Thangammal was given in marriage to the accused and there was a strained relationship between them, since the accused entertained suspicion over the fidelity of his wife and a panchayat was convened. There is evidence to show that on the very day, all of them went to a temple and the accused took Thangammal aside and talked with her for about half an hour. The evidence is available only to that extent. But, according to the prosecution, the occurrence has taken place during night hours on 29.9.2000 at the place of occurrence. The only circumstance relied on by the prosecution is the last seen theory, which the prosecution attempted to prove through P.W.8. According to P.W.8, when he was near the school, he saw the accused and the deceased going together. It is pertinent to point out that he was a close relative of the deceased, namely he was an uncle. If to be so, he was well aware of the strained relationship between the spouses earlier. Hence, one would naturally expect him to question them as to where they were going, but he did not do so. In the next morning at about 7.00 a.m., the dead body of the deceased was found, which was informed to P.W.1. P.W.1 went to the police station and gave Ex.P.1, complaint, which was the origin of the case. At this juncture, it is pertinent to point out that the Investigating Officer claims that he examined P.W.8 on the very day. It is a matter of surprise to note that he was not a witness during the inquest. If the statement of P.W.8 was recorded by the Investigating Officer on the very day, it should have been sent to the Court along with the other case papers, but it reached the Court only on 30.10.2000. It is pertinent to point out that even according to P.W.8, he has not informed to anybody that he saw both of them, till he was examined by the police. Thus, all

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would go to show that the evidence of P.W.8 was introduced in order to make out as if he has last seen the deceased in the company of the accused.

11.Under these circumstances, except the said circumstance, the prosecution had no other evidence or circumstance to offer. Even the alleged confessional statement and the recovery, as rightly pointed out by the learned counsel for the appellant, also falls to ground, since both the witnesses, namely P.Ws.5 and 6 have turned hostile. Even the scientific evidence was also not in support of the prosecution case. Thus, in the instant case, the prosecution rested its case only on circumstantial evidence of last seen theory through P.W.8, which miserably fails. Thus, the Court is unable to see any circumstance pointing to the guilt of the accused. Under these circumstances, it would be unsafe to sustain conviction. Hence, the judgment of the lower court has got to be made undone only by upsetting the same.

12.Accordingly, the judgment of conviction and sentence imposed by the lower court on the appellant is set aside. The appellant is acquitted of the charges levelled against him. The bail bond, if any executed by the appellant, shall stand terminated. The fine amount, if any paid by him, is ordered to be refunded to him. Accordingly, this criminal appeal is allowed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

vvk

To

1.The Judicial Magistrate, No.1,
Dharmapuri.
2.-do-
through the Chief Judicial Magistrate,
Dharmapuri.
3.The Additional Sessions Judge,
Dharmapuri.

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4.-do-
through the Principal Sessions Judge,
Dharmapuri.
5.The Superintendent,
Central Prison, Vellore.
6.The Inspector of Police,
Indur Police Station,
Dharmapuri District.
7.The District Collector,
Dharmapuri.
8.The Director General of Police,
Chennai-4.
9.The Public Prosecutor,
High Court, Madras.

+1cc to M/s. Ganesh Rajan, Advocate Sr 44469

BV (CO)
km/10.10.

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